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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1975

No. 74-1023

HENRY W. KERR, et al., *Petitioners,*

vs.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, *Respondent,*

JOHN VAN GELDERN, et al., *Real Parties in Interest.*

SUPPLEMENTAL BRIEF FOR PETITIONERS and MOTION FOR SPECIAL LEAVE TO FILE

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PETITIONERS' MOTION FOR SPECIAL LEAVE TO FILE SUPPLEMENTAL BRIEF (RULE 41)

Pursuant to Rule 41, subdivisions 5 and 6, Supreme Court Rules, petitioners, defendants below,[1] respectfully request special leave to file the annexed Supplemental Brief. The case was argued and submitted to this Court on November 11, 1975.

Defendants' supplemental brief presents intervening circumstances which, defendants believe, purge the district court of jurisdiction in the underlying action. These circumstances have occurred after No-

[1]For clarity, the parties are hereinafter designated as defendants or plaintiffs according to their positions in the action in the district court. Defendants are the members of the California Adult Authority and the Director of Corrections and are petitioners in the case before this Court. Plaintiffs below are all male felons in prison or on parole and are the real parties in interest before this Court. The United States District Court for the Northern District of California is the respondent in this action before this Court.

vember 11, 1975, and include two major amendments to the complaint, and dissolution of the three-judge district court as no longer necessary to the action as amended.

These changes, which have resulted directly from orders of the district court, were intended by plaintiffs who made considered motions to amend the complaint to abandon relief at prison disciplinary proceedings, to relinquish all injunctive relief, and to then dissolve the three-judge court as unnecessary to the action as amended. Defendants have not sought interlocutory review of these orders in the United States Court of Appeals for the Ninth Circuit, and do not, by this Supplemental Brief, seek review of them in this Court. Rather, defendants present these changes as intervening facts which eradicate jurisdiction in the district court. The matters raised in the Supplemental Brief were presented to the district court in defendants' responses to plaintiffs' motions.

Dated, April 7, 1976.

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SUPPLEMENTAL BRIEF FOR PETITIONERS

SUMMARY OF ARGUMENT

On three occasions after certiorari was granted the district court permitted plaintiffs to make major substantive amendments to their complaint. The last two amendments occurred after argument and submission in this Court on November 11, 1975. Over defendants' objection, the district court has granted plaintiffs' motion to dissolve the three-judge court as unnecessary to the action as amended.

As changed, the action below is now a class action before a single district judge for a declaratory judgment that California's parole consideration-term

fixing procedures are unconstitutional. The changes, deliberately orchestrated by plaintiffs, have purged the district court of any tenable basis for jurisdiction in the action.

The individual claims of the named plaintiffs are no longer cognizable in the district court. As each of the named plaintiffs has been completely discharged from custody, or released on parole, their individual claims have either become moot, and, therefore, barred by Article III, section 2 of the Constitution, or are so remote and insignificant that declaratory relief clearly should be denied even were there power to hear the case.

Without jurisdiction over the individual claims of the named plaintiffs, maintenance of the class action is necessary to the jurisdiction of the district court. *Sosna v. Iowa*, 419 U.S. 393 (1975).[1] The action may proceed as a class action under Rule 23(b)(2) only if plaintiffs' claims make final injunctive relief, or corresponding declaratory relief appropriate. Plaintiffs have intentionally relinquished all injunctive relief.

As plaintiffs have relinquished all injunctive relief, their class action is not maintainable unless the other requisite of Rule 23(b)(2) is met, i.e., unless the

[1] In August 1974 the district court determined the action is maintainable as a class action under Rule 23(b)(2), and defined the class as all adult male felons in prison or on parole in custody of the Department of Corrections now or in the future. On February 5, 1976, the district court denied defendants' countermotions for reconsideration of whether the action should proceed as a class action, and for reconsideration of definition of the class.

declaratory relief sought "corresponds" to final injunctive relief. To correspond to injunctive relief, within the meaning of Rule 23(b)(2), declaratory relief must itself have the practical effect of an injunction, or form the basis for an injunction. If the declaratory relief sought by plaintiffs meets either test, it necessarily also meets the requirements of 28 U.S.C. §§2281-2284 and can not be granted unless heard and determined by a three-judge court.

But plaintiffs not only do not have a three-judge court, they do not want one and have gone to extraordinary lengths to avoid all but the single judge. When, over plaintiffs' objections (CDE Nos. 255, 260),[2] a three-judge court was convened, plaintiffs promptly changed the action by relinquishing most of the relief they had sought, and successfully moved to dissolve the court and achieve remand to the single judge for all further proceedings.

As this result was precipitated designedly by plaintiffs they should be bound by it. As the class action is maintainable only before the three-judge court which plaintiffs have forsaken intentionally and over defendants' objections, and as the individual claims of the named plaintiffs are no longer cognizable in the district court, the single district judge lacks juris-

[2] "CDE" refers to the clerk's docket entries by the clerk of the United States District Court in the docket sheet in the action below. Two copies of this docket sheet were sent to the clerk of this Court as Exhibit A attached to a letter to the clerk dated March 5, 1976 sent by petitioners in response to a telephonic inquiry of March 2, 1976 of the status of the case in the district court. A copy of this letter with attachments was sent the same date to the other parties.

diction to proceed with the action. Accordingly, defendants request that this Court vacate the decisions below and remand the matter with directions that the complaint in the district court be dismissed.

ARGUMENT

I

THE NATURE AND SCOPE OF THE UNDERLYING ACTION HAVE CHANGED TO A POINT WHERE THE DISTRICT COURT IS NOW WITHOUT JURISDICTION.

A. Summary Of Plaintiffs' Changes To The Action

When the discovery orders under review were issued on August 12, 1974 (A.367)[3] and on December 3, 1974 (A.647) the action in the district court was a class action for declaratory relief and injunctive relief at (1) parole date recision proceedings; (2) parole revocation proceedings; (3) prison disciplinary proceedings; (4) parole reconsideration-term fixing proceedings. The text of the original complaint is printed in the single appendix at A.8-50.

After certiorari was granted on May 27, 1975, the district court has permitted plaintiffs three major amendments to the complaint:

1. Plaintiffs' abandonment of relief at parole date recision proceedings, and at parole revocation proceedings.

Upon plaintiffs' motions granted on June 25, 1975, plaintiffs, on July 1, 1975, filed a second amended

[3] "A." refers to the printed single appendix filed in this case.

complaint which expanded the nature of the relief sought by the plaintiff class, but narrowed the proceedings to which the relief would apply to (1) prison disciplinary proceedings and (2) parole consideration-term fixing proceedings. Relief at parole date recision proceedings, and at parole revocation proceedings was abandoned in this amended complaint. This change in the action is discussed in more detail in the Brief For Petitioners, pages 24-26.

In October 1975 a three-judge district court was convened in the action below on notice of the district judge filed October 20, 1975 (CDE No. 303), and order of the United States Court of Appeals filed October 28, 1975 (CDE No. 321).

2. Plaintiffs' abandonment of relief at prison disciplinary proceedings.

On November 20, 1975 the single district judge granted plaintiffs' motion to amend their complaint to further narrow the relief sought and the proceedings to which relief would apply by abandoning injunctive relief at prison disciplinary proceedings and focussing the action to declaratory and injunctive relief at parole consideration-term fixing proceedings. Plaintiffs' intent to so amend the complaint was first described in open court in the district court on October 23, 1975 and was discussed further at the proceedings on November 20, 1975. Copies of the reporter's transcripts of these proceedings on October 23 and November 20, 1975 were attached as Exhibits B and D respectively to petitioner's letter to the clerk of this court dated March 5, 1976.

3. **Plaintiffs' relinquishment of all injunctive relief.**

On December 18, 1975 plaintiffs filed a notice for hearing before the three-judge court of motions to further amend the complaint to abandon all requests for injunctive relief and to dissolve the three-judge court as unnecessary to the action as thus amended (CDE No. 333). A copy of plaintiffs' moving papers were attached as Exhibit F to petitioner's letter to the clerk of this court dated March 5, 1976. On January 29, 1976 plaintiffs' motions were calendared for hearing by the single judge on February 5, 1976 (CDE 342).[4]

At the conclusion of the hearing on February 5, 1976 the single district judge granted plaintiffs' amendment to the complaint. By order dated and

[4]On January 30, 1976 defendants filed countermotions to plaintiffs' motions to amend and dissolve. Defendants countermotions were addressed to the three-judge court, and included requests to put the action off calendar pending disposition of the case pending in this Court, and pending disposition of pending state administrative proceedings on reconsideration and codification of all Adult Authority procedures pursuant to a new state statute effective January 1, 1976. Other countermotions called for distuissal or other limitations of the action, for review by the full court of certain previous actions by the single judge, and for retention of jurisdiction by the three-judge court to hear and determine the matter even as limited to declaratory relief. (CDE Nos. 338, 339). On February 2, 1976, defendants filed in the district court a special memorandum concerning jurisdiction of the single judge to narrow the action or to order dissolution of the three-judge court, and requesting that plaintiffs' motions to amend the complaint be heard by the full court (CDE No. 340). Copies of defendants' countermotions were attached as Exhibit H, and copies of defendants' special memorandum were attached as Exhibit I to defendants' letter to the clerk of this Court dated March 5, 1976.

stamped filed February 5, 1976,[5] it appears that the three-judge court has granted plaintiffs' amendments to the complaint, denied defendants' countermotions, granted plaintiffs' motion to dissolve the three-judge court, and remanded the matter to the single district judge for all further proceedings. A copy of this order is annexed in the appendix to this Supplemental Brief, page i. The text of the complaint as amended was filed February 24, 1976, and is annexed in the appendix to this Supplemental Brief, pages ii-xxxix.

As changed, this action is now a class action before a single district judge for a declaratory judgment that state parole consideration-term fixing proceedings are unconstitutional.[6] On April 8, 1976 the district court ordered that the case is set for trial on July 5, 1976.

These changes have purged the district court of any tenable basis for jurisdiction in the action. To sustain the class action the relief sought must "correspond" to an injunction in order to meet the requirements of

[5]Although convened by order of the Court of Appeals filed October 28, 1975, and dissolved by its own order dated February 5, 1976, the three-judge district court has never sat in open court and counsel were never permitted to appear before the full court. Only the single district judge attended the proceedings on February 5, 1975.

[6]Monetary relief has never been sought by plaintiffs. As the action below has involved only challenges to proceedings at which the defendants exercise official judgmental discretion in a quasi-judicial capacity it would appear that monetary relief would be barred by their immunity from liability in damages in an action initiated under 42 USC § 1983, see, *Pierson v. Ray*, 386 U.S. 547 (1967), and by the Eleventh Amendment to the Constitution of the United States.

Rule 23(b)(2). If the relief sought by plaintiffs' class meets this test, it necessarily also comes within 28 USC §2281 and cannot be granted by a single district judge. Accordingly, the class action can not be maintained before the single district judge. Maintenance of the class action is necessary to jurisdiction in the district court because the named plaintiffs' individual claims for declaratory relief are each moot. A three-judge court is not available to hear the class action because one was convened and then dissolved by unanimous order of the three judges upon plaintiffs' motions to amend the complaint and to dissolve the court. Defendants have not sought review of this order, nor have plaintiffs sought review of the three judge order which granted their motions. As the district court is without jurisdiction in the action, the complaint should be dismissed.

B. In this Case, Declaratory Relief Sufficient To Support A Rule 23(b)(2) Class Action Can Not Be Heard and Determined By A Single District Judge.

By order filed August 1, 1974, the district court determined the action below is maintainable as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure.[7] (A.369-370). Under this provision, a class action is permissible only where final injunc-

[7]Rule 23(b)(2) provides:

"(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or *corresponding* declaratory relief with respect to the class as a whole;" (Emphasis added).

tive relief or corresponding declaratory relief is appropriate.

The word "corresponding" has meaning, and is not mere surplusage which may be ignored. According to the Notes of Advisory Committee on Rules:

> "Declaratory relief 'corresponds' to injunctive relief [within the meaning of Rule 23(b)(2)] when as a practical matter it affords injunctive relief or serves as a basis for later injunctive relief." United States Code Annotated, Title 28, Federal Rules of Civil Procedure, Rule 17 to 23.2, page 298.

There are three possible effects of the declaratory relief sought by plaintiffs: the declaratory judgment may have no effect, or be merely advisory; the relief may itself be tantamount to an injunction to affect directly and tie the hands of the Adult Authority; or the declaration might be presented with assertions of res judicata or collateral estoppel to a three-judge court for an actual injunction. Declaratory relief which has no effect, or is merely advisory should be denied.[8] Such relief would not resolve the rights of the parties, would not involve any significant interest of sufficient immediacy to warrant exercise of the court's equitable jurisdiction, and would not involve a justiciable case or controversy.

The remaining alternatives would be injunctive in fact and declaratory in name only. The most prob-

[8]Also, such limited declaratory relief would be insufficient to "correspond" to an injunction, could not meet the requirements of Rule 23(b)(2), and could not sustain the class action which is necessary to the jurisdiction of the district court.

able effect of the relief sought by plaintiffs is an injunction. As the class of plaintiffs includes every adult male felon in prison or on parole, now or in the future, a declaration that the Adult Authority procedures violate the Constitution necessarily would affect each and every such proceeding in California. Thousands of these proceedings are conducted each year according to rules, regulations, and procedures adopted formally by the Adult Authority pursuant to California state statutes.[9] The declaration would burden every proceeding because every prisoner coming before the Adult Authority would be a member of the class of plaintiffs to whom the benefit would run, and the Chairman and members of the Adult Authority are defendants to whom the burden would run. Standing alone, such declaratory relief would be tantamount to injunction by requiring defendants to comport to it under pain of summary negation of any action taken with respect to any California prisoner in prison or on parole.[10] An actual injunction would add only the threat of contempt to plaintiffs' arsenal.

[9]The text of the formally adopted procedures, rules, and regulations, and of the state statute according to which they must be codified, were furnished to the district court, and are included in the attachments to defendants' letter to the clerk of this Court dated March 5, 1976, as Exhibits A, B, and C of Exhibit H (Defendants' Countermotions, etc).

[10]Defendants might also be subject to damage actions for wilfull infringement of Constitutional rights announced in the declaration. Collateral estoppel or res judicata would be urged by plaintiffs to bar defendants from going behind the declaration, and defenses of official quasi-judicial discretion, or good faith would be difficult if not impossible to prove in the face of the unassailable declaration. See, *Mattis v. Schnarr*, 502 F.2d 588, 592-593 (8 Cir. 1974).

It should not be assumed this is necessary to persuade defendants to comply with the Constitution.

Plaintiffs might seek to use the declaration as the basis for later injunction. Plaintiffs would present the declaratory judgment to a three judge tribunal as *fait accompli* with assertions of res judicata or collateral estoppel, and seek an injunction on some summary showing that defendants acted without having comported to the declaration. If the declaratory judgment were granted res judicata effect,[11] the ambit of the three judge tribunal would be narrowed to the nearly ministerial task of issuing the injunction on the basis of a single judge's determinations beyond their pale. This would subvert the clear intent of Congress that such an injunction shall not issue unless the full court has "heard and determined" the matter. 28 USC §§2281, 2284. See, Currie, *The Three-Judge District Court In Constitutional Litigation,* 32 U.CHI.L.REV., 1, 13-20 (1964).

This procedure would also narrow the appellate jurisdiction of this Court. A three-judge court order granting or denying the injunction would be reviewable on direct appeal to this Court. 28 USC §1253. But such review would not reach the single judge's declaratory judgment because the doctrines of res judicata or collateral estoppel would have barred the three judge court from going behind it. Separate review in the Court of Appeals (28 USC §§1291, 2201) of the

[11]Without a res judicata effect, the declaration could not form the "basis" for such latter injunctive relief, would not "correspond" to injunction, and, therefore, would be insufficient to meet the requirements of Rule 23(b)(2) to sustain the class action.

single judge's declaratory judgment would improperly abridge defendants' right to full review of a three judge court injunction on direct appeal to this Court under 28 USC §1253.

The effective similarities of broad declaratory relief, such as is sought by plaintiffs, and actual injunction was recognized by this Court in *Samuels v. Mackell*, 401 U.S. 66, 72-73 (1971). A single judge declaratory judgment which itself effects injunction, or which has a res judicata effect upon application for a three-judge court injunction, would frustrate completely the clear intent of Congress in enacting 28 U.S.C. sec. 2281:

> "To bring this procedural device into play—to dislocate the normal operations of the system of lower federal courts and thereafter to come directly to this Court—requires a suit which seeks to interpose the Constitution against enforcement of a state policy, whether such policy is defined in a state constitution or in an ordinary statute or through the delegated legislation of an 'administrative board or commission.' The crux of the business is procedural protection against an improvident statewide doom by a federal court of a state's legislative policy. This was the aim of Congress . . ." *Phillips v. United States*, 312 U.S. 246, 251 (1941).

The problem of the res judicata effect of such a declaratory judgment as highlighted in *Nixon v. Richey*, 513 F.2d 430, 438 (D.C.Cir. 1975), was emphasized to the district court in this action in Defendants' Supplemental Memorandum filed February 2, 1976 (CDE

No. 340).[12] In another context, Justices of this Court have expressed differing views of whether a declaratory judgment may be granted res judicata effect to obtain an injunction. In *Steffel v. Thompson*, 415 U.S. 452 (1974), compare the separate concurring opinion of Mr. Justice Rehnquist, joined by the Chief Justice, 415 U.S. at 478-485, with the concurring opinion of Mr. Justice White, 415 U.S. at 476-478. But *Steffel* lacked the class action considerations which, in this case, necessarily highlight a nexus between Rule 23(b)(2) and 28 U.S.C. §2281.

In *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963), this Court recognized but declined to reach the question: "Whether an action solely for declaratory relief would under all circumstances be inappropriate for consideration by a three-judge court we need not now decide, for it is clear that in the present case, the Congressional policy underlying the statute [28 USC §2281] was not frustrated by trial before a single judge." 372 U.S. at 154. In the class action now pending before the single judge, the declaratory relief sought by plaintiffs is a link which connects Rule 23(b)(2) with 28 USC §2281, and will necessarily frustrate such Congressional policy if it is heard and determined by a single judge.

For the above reasons the single district judge has no jurisdiction to hear and determine plaintiffs' class action for a declaratory judgment the practical effect

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[12] A copy of the text of this special memorandum of defendants was attached as Exhibit I to defendants' letter to the clerk of this Court dated March 5, 1976.

of which would be to enjoin an entire statewide administrative scheme formally adopted by the California Adult Authority pursuant to state statute. Similarly, a declaratory judgment issued by the single judge could not be granted a res judicata effect to form the basis for a subsequent injunction by a district court of three judges. Without the practical effect of injunction, and without a res judicata effect, the single district judge's declaratory judgment could not "correspond" to injunctive relief.

The three-judge court having been dissolved recently upon plaintiffs' motion for dissolution and order signed by the three judges, the single judge district court does not have jurisdiction to proceed with the class action, and may proceed only insofar as it has cognizance over the individual claims of the named plaintiffs. For the reasons which follow, the district court also lacks jurisdiction over the action thus constituted.

C. The Action Below Is Moot as to Each Named Plaintiff.

The original complaint was filed in the district court in November 1972 by seven state prison inmates: (1) John Van Geldern; (2) Danny Jones; (3) Charles Edward Van Nort; (4) Billy Ray Lewis; (5) Robert Newton Gardner, Jr.; (6) James Murrin; (7) George Chatfield. No named plaintiffs have been added to the action.

On December 20, 1974 Billy Ray Lewis was discharged from his commitment; Robert Newton Gardner, Jr. was discharged from his commitment on August 5, 1975; and John Van Geldern was discharged on August 20, 1975. George Chatfield was released on parole July 26, 1975 and Charles Edward Van Nort was released on parole after a determination on August 27, 1975 that he may be released upon approval of a parole plan.[13] James Murrin has been dismissed from the action by order of the district court, filed October 6, 1975 (CDE 291) on stipulation of counsel. In June 1975 Danny Jones was granted parole effective April 4, 1976.[14] Jones' release was subsequently advanced and he was released on parole on January 27, 1976. The last proceeding involving the plaintiff Jones to which reference is made in the complaint was a parole consideration proceeding which occurred in May 1972. The amendments to the complaint include no reference or challenge to the procedures followed, or the result reached, at the June 1975 parole consideration proceeding at which Jones was granted parole effective April 4, 1976.

The dismissal of Murrin, of course, eliminates his allegations from the action as is apparent from the text of the complaint as amended which makes no reference to him. The discharge of Van Geldern, Lewis and Gardner moots the allegations and claims

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[13]These facts were presented to the district court in an affidavit of defendant Raymond K. Procunier, Chairman of the California Adult Authority, attached as Exhibit D to defendants' countermotions filed in the district court January 30, 1976 (CDE No. 338). These countermotions, together with the exhibits attached thereto, were attached as Exhibit H to defendants' letter to the clerk of this Court dated March 5, 1976.

[14]This fact is set forth in paragraph No. 10 of the January 23, 1976 affidavit of Raymond K. Procunier to which reference is made in footnote 13 above.

of those named plaintiffs. *Weinstein v. Bradford,* ..... U.S. ....., 44 U.S.L.W. 3372 (No. 74-1287; December 10, 1975).[15]

The release on parole of named plaintiffs Chatfield, Jones, and Van Nort also renders moot their individual claims. Relying on *Sosna v. Iowa,* 419 U.S. 393 (1975), this Court in *Weinstein v. Bradford, supra,* stated that in the absence of a class action[16] the "capable of petition yet evading review" doctrine was limited to the situation where two elements combined: (1) A challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subject to the same action again. Plaintiffs Chatfield, Jones, and Van Nort, having been released on parole, could be subject to future parole consideration proceedings only if they (1) violated parole; (2) had their parole revoked on the basis of that violation, and (3) were ordered by the Adult Authority returned to prison because of such violation.[17] In defendants' view, there

[15]Plaintiffs do not seek monetary relief in this civil rights action and, as indicated above, have relinquished all injunctive relief.

[16]For the reasons set forth above, the action below, while certified as a class action, cannot proceed before the single district court as a class action. With respect to this circumstance defendants emphasize that it was upon plaintiffs' motion to amend the complaint, and affirmative motion to dissolve the three-judge district court as unnecessary to the action as amended, which precipitated an actual dissolution of the three-judge court necessary to maintenance of the action as a class action for the declaratory relief sought by plaintiffs.

[17]Of course, any such parole revocation proceedings would comport to the requirements of due process established in *Morrissey v. Brewer,* 408 U.S. 471 (1972), and *Gagnon v. Scarpelli,* 411 U.S. 778 (1973). Chatfield, Jones and Van Nort, could also be returned to prison on a new felony conviction and sentence, but we have already established that, under *Weinstein v. Bradford,* supra, this is not a possibility which can save their claims from mootness.

is not a "reasonable expectation," or "demonstrated probability" [*Weinstein v. Bradford, supra*] that these named plaintiffs will violate their parole, be revoked, and returned to prison.[18]

The possibility of the named plaintiffs who have been released on parole (Van Nort, Jones and Chatfield) of being subject in the future to parole consideration-term fixing proceedings is a matter of speculation and conjecture, and is not of sufficient immediacy and reality to warrant invocation of the equitable jurisdiction of the district court. See *Steffel v. Thompson,* 415 U.S. 452, 460 (1974); *O'Shea v. Littleton,* 414 U.S. 488, 496-499 (1974). The named plaintiffs individual claims for declaratory relief are, there-

[18]By their amendments to the complaint filed July 1, 1975 plaintiffs abandoned their challenge against parole date recision proceedings, and by the amendments of November 1975 abandoned the relief sought with respect to prison disciplinary proceedings. Under California state law, parole date recision proceedings are now attended by the due process safeguards articulated both in *Morrissey v. Brewer, supra,* and in *Gagnon v. Scarpelli, supra. In re Prewit,* 8 Cal.3d 470, 503 P.2d 1326 (1972); *Gee v. Brown,* 14 Cal.3d 571, 536 P.2d 1017 (1975). The prison disciplinary proceedings the result of which would form the basis for the parole date recision proceeding would be attended by the due process rights articulated in *Wolff v. McDonnell,* 418 U.S. 539 (1974), subject to any clarification which may appear in this Court's opinion in *Enomoto v. Clutchette,* No. 74-1194 (argued December 15, 1975) 44 U.S.L.W. 3372. Finally, under new regulations promulgated by the Director of Corrections and by the Adult Authority, major disciplinary proceedings involving an inmate who has been given a parole release date are combined with parole recision proceedings so that as a matter of California state law, the due process standards articulated in *Morrissey* and in *Scarpelli* would attend any combined disciplinary-recision proceedings.

fore, moot or non-justiciable. Justiciability is made the more remote by plaintiffs representations to this Court that they do not attack the correctness of any agency decision and do not seek to challenge or overturn any administrative decision by the underlying litigation in the district court. Respondents' Brief, pages 22-23, 78.

D. As the Action Focuses On Parole Consideration-Term Fixing Proceedings, Which Concern Exclusively Administrative Determinations Of State Custody, Federal Jurisdiction Must Be Founded On 28 USC §2254 And Not On 42 USC §1983.

Plaintiffs, by their affirmative motions, have focused the action in the district court on parole consideration-term fixing proceedings. These administrative proceedings relate exclusively to determinations of state custody. At page 6, footnote 3 of Respondents' Brief filed in this Court, plaintiffs asserted that their action in the district court is "concerned solely with the term fixing, parole granting hearings . . ." conducted by the Adult Authority. Plaintiffs subsequent amendments to the complaint have formally adjusted the action to comport to that representation.

By relinquishing claims for relief at prison disciplinary proceedings, and by relinquishing all claims for injunctive relief, plaintiffs have strengthened the basis for defendants' argument presented under Argument IV, pages 15-17, of the Reply Brief of Petitioners filed in this Court. In short, the district court lacks jurisdiction under Title 42 USC §1983 to litigate challenges to proceedings the exclusive concern of which is the duration of custody of state prisoners. *Preiser v. Rodriguez*, 411 U.S. 474 (1973).

II

BY LIMITING THEIR ACTION TO DECLARATORY RELIEF UNDER 28 USC §2201, PLAINTIFFS MAY BE DENIED PERMISSION TO PROCEED: SUCH PERMISSION SHOULD BE WITHHELD FOR PREVAILING CONSIDERATIONS OF EQUITY, COMITY AND FEDERALISM.

The remedy of declaratory judgment created by Title 28 USC §2201 confers discretion on the courts rather than an absolute right upon a litigant. *Public Service Commission v. Wycoff Co.*, 344 U.S. 237, 241 (1952). Whether to entertain a suit for declaratory judgment rests in the sound discretion of the courts, and, unlike other civil actions, the conclusion that the court has the power to hear the action does not require the court to proceed. *Public Affairs Associates v. Rickover*, 369 U.S. 111, 112 (1962). The object of section 2201 is to afford a new form of relief where needed, and not to furnish a new choice of tribunals or to draw into the federal courts the adjudication of causes properly cognizable in other proceedings. See *Aetna Casualty and Surety Company v. Quarels*, 92 F.2d 321, 324 (4th Cir. 1937); *Fireman's Insurance Co. v. Riley*, 322 F.2d 349, 352 (W.D.Ken. 1972). Although a suit for declaratory judgment is brought under a statute, it is nevertheless essentially an equitable cause of action, and Congress explicitly contemplated that the court would decide to grant or withhold declaratory relief on the basis of traditional equitable principles. See, *Samuels v. Mackell, supra*, 401 U.S. 66, 70 (1971). Considerations of a proper federal-state relationship, and traditional notions of comity and federalism, should also be taken into account in con-

sidering whether a plaintiff may properly proceed with an action for declaratory judgment. See, *Public Service Commission v. Wycoff Company, supra,* 344 U.S. at 247.

Plaintiffs' available adequate remedies include federal and state habeas corpus proceedings, as well as state administrative proceedings and state declaratory judgment proceedings.[19] The intrusive effect of this action on federal-state relations is emphasized by plaintiffs' additional demand that the district court exercise pendant jurisdiction to declare the procedures invalid under state law. Typically a declaratory judgment action is an expeditious proceeding involving only an issue of law or undisputed, or relatively undisputed facts, and it may operate frequently as a summary proceeding. Notes of Advisory Committee on Rules, Rule 57. But the trial pending in the district court could not be more atypical inasmuch as, in response to an inquiry from the single district judge, plaintiffs recently (February 17, 1976) listed 95 witnesses they intend to call at trial and estimated their case will require 24 court days. Defendants listed 44 witnesses they will call and estimated that direct examination of their witnesses will require 15 court days. These estimates assume respective counsel will stipu-

[19]Although the availability of other adequate remedies may not necessarily preclude declaratory relief in cases where it is appropriate (Rule 57, Federal Rules of Civil Procedure), defendants submit that such other remedies may be taken into account where, as here, they are more complete (e.g., habeas corpus); more expeditious; less intrusive on a proper federal-state relationship, and where denial of the equitable relief will not irreparably injure plaintiffs. See, *Rivera v. Freeman,* 469 F.2d 1159, 1164 (9 Cir. 1972).

late into evidence a substantial number of documents which will include the rules, regulations, procedures, manuals, and forms relating to the construction of, and access to, inmate files; to Adult Authority proceedings, and to the information considered at such proceedings. The action will thus not only cast a very substantial burden on the federal trial court, but will cast a similar burden on the United States Court of Appeals, where review most assuredly will be sought from any decision of the district court. Review of a declaratory judgment is de novo on the record, and the appellate court may substitute its judgment for that of the trial court. *Delno v. Market Street Railway Company,* 124 F.2d 965 (9th Cir. 1942).

Whether declaratory relief is appropriate under the circumstances of a particular case in a district court may be considered, even in the first instance, in this Court. *Public Service Commission v. Wycoff Company, supra,* 344 U.S. 237, 241 (1952). The district court is in no better position than this Court to make this determination in this case, and defendants urge this Court to reach the question and to determine that such relief is inappropriate. According to a recently enacted state statute effective January 1, 1976,[20] all rules, regulations, resolutions and policy statements of the Adult Authority must actually be reconsidered at public hearings and formally promulgated and codified by July 1, 1976. The same statute (section 2 thereof)

[20]California Statutes 1975, Chapter 1160. A copy of the text of this statute is attached as Exhibit A of defendants' countermotions, etc. which is Exhibit H attached to defendants' letter to the clerk of this Court dated March 5, 1976.

makes applicable to the Adult Authority rules, etc., the provisions of California Government Code sections 11371 through 11445 which prescribe a procedure for adoption of regulations; entitle any interested person to petition the Adult Authority to adopt, amend or repeal any such regulation [Government Code section 11426, 11427], and entitle any interested person to obtain state declaratory relief with respect to the validity of any regulation (Government Code section 11440).[21]

For the above reasons, defendants submit declaratory relief is inappropriate in the action in the district court.

CONCLUSION

For reasons heretofore urged by defendants in their briefs filed in this Court, the discovery orders of the district court are invalid. In addition, by reason of changes in the action wrought at the behest of plaintiffs and on order of the district court, the district court has no jurisdiction in the underlying action of which the discovery orders being reviewed are a part. Without such jurisdiction the district court cannot take steps to comport to a decision of this Court on remand.

Moreover, even if the district court had the power to hear plaintiffs' action for declaratory judgment, such relief is inappropriate under the circumstances of this case and should be withheld.

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[21]The full text of California Government Code sections 11371-11445 is attached as Exhibit B to defendants' countermotions, etc., filed in the district court and attached as Exhibit H to defendants' letter to the clerk of this Court dated March 5, 1976.

For the above reasons defendants respectfully request that the decisions of the Court of Appeals and the discovery orders of the district court be vacated, and that the case be remanded with directions that the complaint in the district court be dismissed. See, *Weinstein v. Bradford, supra,* ..... U.S. ....., 44 U.S.L.W. 3372 (1975); *Board of School Commissioners of the City of Indianapolis v. Jacobs,* 420 U.S. 1298 (1975); *United States v. Munsingwear Inc.,* 340 U.S. 36 (1950).

Dated, April 7, 1976.

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Attorneys for Petitioners.

(Appendix Follows)

Appendix

Appendix

Appendix

In the United States District Court for
the Northern District of California

No. C-72-2088 SAW

John Van Geldern, et al., Plaintiffs,

vs.

Henry W. Kerr, et al., Defendants.

[Filed Feb. 5, 1976]

ORDER

It Is Hereby Ordered for good cause shown:

1. Plaintiffs' motion to amend their complaint is granted.

2. Plaintiffs' motion to dissolve the three-judge court is granted.

3. Defendants' countermotions filed and dated January 29, 1976, are hereby denied.

4. This case is hereby remanded to District Judge Stanley A. Weigel, the original single Judge in this matter, for all further proceedings.

Dated: 2/5/76

/s/ Anthony M. Kennedy
Circuit Judge

/s/ Spencer Williams
District Judge

/s/ Stanley A. Weigel
District Judge

[Designation of Offices of Attorneys for Plaintiffs Omitted in Printing]

In the United States District Court for the Northern District of California

No. C 72-2088 SAW

John Van Geldern, et al., Plaintiffs,

vs.

Henry W. Kerr, et al., Defendants.

[Filed February 24, 1976]

SECOND AMENDED COMPLAINT FOR VIOLATION OF CIVIL RIGHTS, FOR DECLARATORY RELIEF

JURISDICTION

1. This is a civil action brought by plaintiffs on behalf of themselves and all others similarly situated under Section 1343 of Title 28 of the United States Code, to redress the deprivation of rights, privileges and immunities secured to them by the Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States. Pursuant to 42 U.S.C. Sections 1983 and 1988 and 28 U.S.C. Sections 2201 and 2202, plaintiffs seek declaratory relief to remedy the unconstitutional conduct of defendants complained of herein. In addition, plaintiffs invoke the pendant jurisdiction of this Court, inasmuch as such conduct also violates the Constitution and Statutes of the State of California.

PARTIES

2. Plaintiffs JOHN VAN GELDERN, ROBERT NEWTON GARDNER, JR., and BILLY RAY LEWIS, who were prisoners in custody of the Department of Corrections of the State of California (hereinafter the "Department"), are presently on parole in the custody of the Department. Plaintiffs DANNY JONES and CHARLES EDWARD VAN NORT are prisoners in the custody of the Department and are presently confined at the California Men's Colony at San Luis Obispo, California. Plaintiff GEORGE CHATFIELD is a prisoner in the custody of the Department presently confined at the California State Prison at San Quentin.

3. Plaintiffs bring this action as a class action, on behalf of themselves and all adult male felons who are now, as well as all adult male felons who in the future will be, in the custody of the Department, whether confined in an institution operated by the Department or on parole. As to such class of persons, it is so numerous that the joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the named plaintiffs herein are typical of the claims of the class, and plaintiffs will fairly and adequately protect the interests of the other members of the class. In addition, the prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members thereof which would as a practical matter be dispositive of the interests of the other members not parties to the

adjudications, or substantially impair or impede their ability to protect their interests; and, the parties opposing the class have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

4. Defendants R. K. PROCUNIER, R. C. BROWN, R. C. GARCIA, J. H. HOOVER, H. W. KERR, C. O. LYNUM, MANUEL QUEVEDO, JR., R. L. RUSHEN, and R. G. WOOD are members of the California Adult Authority, and W. J. LEON, JR., is Administrative Officer of the Adult Authority. In addition, R. K. PROCUNIER was, at all times material prior to his appointment as Chairman of the California Adult Authority in January of 1975, Director of the California Department of Corrections. MANLEY J. BOWLER, WALTER A. GORDON, JR., LELAND M. EDMAN, CHARLES E. BROWN, and DANIEL LOPEZ were, at the time this action was initially filed and for various periods thereafter, members of the Adult Authority; and defendant JOSEPH A. SPANGLER was, at the time this action was initially filed and until January of 1975, the Administrative Officer of the Adult Authority. In their official capacities, said defendants are responsible for designing and implementing constitutional, lawful, and fair procedures to determine, *inter alia,* whether or not to fix an inmate's term and grant parole.

5. Defendant J. J. ENOMOTO is the Director of the Department and in such capacity is responsible

for the overall operation of the Department, the promulgation and enforcement of rules governing the confinement of inmates subject to the custody of the Department, including the proceedings held to determine disciplinary charges, and the keeping of the inmate central files relied on by the Adult Authority in making its term-fixing and parole release determinations.

6. Defendants are sued both individually and in their official capacities. In depriving plaintiffs and the members of their class of their constitutional rights, as set forth hereinafter, defendants and each of them have acted and refused to act under color of the statutes, ordinances, regulations, customs and usages of the State of California.

FACTS

7. *Plaintiff Billy Ray Lewis*

A. In March of 1972, plaintiff BILLY RAY LEWIS was released on parole. His parole plan was based upon his working as a janitor in San Jose. Plaintiff commenced said employment, and approximately one month after his release married the woman to whom he had been engaged during his imprisonment. Shortly after their marriage plaintiff LEWIS and his wife experienced a series of marital difficulties. Plaintiff and his wife quarreled frequently and on more than one occasion his wife threatened to have his parole violated without cause and solely so plaintiff would be returned to prison. Eventually plaintiff moved out of their bedroom and

because of their growing incompatibility ceased having sexual relations with his wife.

B. On or about October 18, 1971, plaintiff's wife locked the door to their house, barred plaintiff's entry thereto, and demanded that he return later in the day to gather his belongings and that he move out. When plaintiff returned he was arrested by the Police and charged with the crime against nature based on a complaint allegedly made by plaintiff's wife to his parole officer falsely accusing plaintiff of having sexual relations with a dog.

C. Plaintiff's wife denied and now denies having lodged such a complaint. Plaintiff is unaware whether his wife's denial of having lodged the charge is true or whether she in fact lodged the complaint pursuant to her earlier threats to cause his parole to be revoked. In either case, said charges were and are complete fabrications and totally false, and plaintiff's wife so informed the Santa Clara Public Defender who was appointed to represent plaintiff in court. All criminal charges against plaintiff were accordingly dismissed.

D. At all times relevant hereto, plaintiff did everything in his power to preserve a difficult and deteriorating personal relationship with his wife under adverse conditions caused by his wife's quarrelsome nature, by her obesity, and by her constant threats to revoke his parole.

E. Notwithstanding the above, and notwithstanding the fact that plaintiff's wife informed the Adult

Authority that her alleged complaint was untrue, plaintiff was returned to prison and in December of that year appeared before the Adult Authority on parole violation charges which were based entirely upon the same charge which had been dismissed by the Court. At the hearing plaintiff was not permitted to rebut the charge against him, or to present any witnesses or other evidence to prove the falsity of the charges. Although plaintiff pled "not guilty" to the charge, the Adult Authority found him guilty, ordered that plaintiff undergo a psychiatric examination and obtain a "psych clearance" prior to his next parole hearing in May of 1972. Subsequently, plaintiff was duly examined and given a psychiatric clearance.

F. On or about April 26, 1972, plaintiff again appeared before the Adult Authority for parole consideration and sentence determination. On this occasion the Adult Authority refused to determine plaintiff's sentence or to release him on parole because of suspicion of sodomizing a dog and on a charge of "lewd behavior" and upon the further ground that he refused to admit that he was guilty. Again, plaintiff was denied the right to be represented by an attorney who was willing and able to appear in his behalf; and he was again denied the opportunity to present evidence or to rebut the false charges against him. At the hearing plaintiff was denied further parole consideration until November of 1972. Plaintiff was released on parole subsequent to the institution of this action.

8. *Plaintiff Danny Jones*

A. In February of 1970, an Adult Authority panel which included defendant LYNUM fixed two concurrent terms which plaintiff DANNY JONES was then serving, set a parole release date of October 1, 1970, and assigned plaintiff JONES to the department's Work Furlough program. Certain agents, representatives, and employees of defendant PROCUNIER, constituting members of the Classification Committee at the California Institution for Men at Chino (hereinafter "Chino") where plaintiff JONES was then confined, opposed the work furlough assignment, and arranged to prevent JONES from being so assigned. Plaintiff JONES saw no way to appeal the Department's frustration of the assignment ordered by the Adult Authority other than purposefully incurring a disciplinary report in order to appear again before defendant LYNUM. This plaintiff did, and when defendant LYNUM learned of plaintiff's situation, he reversed the action of the said Classification Committee and insisted that plaintiff be assigned to the Work Furlough program. Thereafter, two of the said Committee members told plaintiff explicitly that any possible excuse would be seized upon by them to bring about the rescission of plaintiff's parole date.

B. Plaintiff JONES subsequently obtained a job and then a promotion with Carson Industries, a trailer manufacturer. Certain of defendant PROCUNIER's agents, representatives and employees continued to plan actively to obtain rescission of plaintiff's parole date, and some made bets among themselves that he

would not be able to complete the program without having his parole date rescinded. Plaintiff JONES withstood the tensions and difficulties imposed by this continuing attitude, and made an excellent adjustment in the Work Furlough program and established a warm relationship with a woman his own age.

C. On or about September 26, 1970, only five days before plaintiff JONES was due to be released on parole, he returned to the prison quite tired from a hard day's work, and went to sleep at about 8:30 PM. Several hours later, about four guards, agents, representatives and employees of defendant PROCUNIER, went through plaintiff's wing and made their count on plaintiff's tier by loudly slamming the doors of the various cells. A few minutes later, the guards returned to plaintiff's cell and repeated the door banging routine, whereupon plaintiff, violently awakened from the beginnings of sleep, verbally protested this action to the guards involved. Although plaintiff's protest had been temperate and reasonable, the guards told him that they were going to lock him up for insubordination. Later, before the Watch Lieutenant, they altered their story to falsely charge plaintiff with threatening an officer. This Lieutenant listened to plaintiff's version of the incident and, noting that he had only five days to go before release on parole, told plaintiff to return to his cell and to continue his regular work schedule.

D. On or about September 29, 1970, upon returning to the institution from work, plaintiff was summarily placed in chains, taken to the Custody Ser-

geant's office, and later placed in isolation, although no reason was given for this treatment. About ten days later, several days after plaintiff was to have been released on parole, he was taken before a disciplinary committee composed of the same staff members who had opposed his participation in the Work Furlough program and charged with "threatening an officer" and "disobeying orders". About a week later, plaintiff appeared before two members of the Adult Authority for an interview which lasted less than two minutes. Three days later he received official notice that his parole date had been rescinded, and that he would be scheduled for an appearance before the Adult Authority in March of 1971, for further parole consideration. Petitioner was then transferred to Folsom Prison.

E. In March of 1971, petitioner appeared before the Adult Authority and received a new parole date of December 6, 1971. Although plaintiff opposed participation in the Work Furlough program, based upon his earlier experience, he was nonetheless transferred to said program, and to the same part of Chino where he had earlier had his difficulties with staff.

F. Upon entering the Work Furlough program, petitioner obtained employment with the same employer and once again, working and saving diligently, was able to establish credit, buy a car, and commence normal relationships with people on the outside world. However, about a month later plaintiff was summarily removed from the Work Furlough program pending "investigation", which apparently continued for the

next five days, whereupon plaintiff was told by staff that the investigation had "cleared" him and that he was being reinstated in the Work Furlough program. To this date plaintiff does not know what the reason for the "investigation" was. However, upon returning to his place of employment plaintiff's supervisor told him that he could not afford to hire people who would be arbitrarily suspended from the program for five days, as plaintiff had, and that he would therefore terminate plaintiff's employment and thereafter refrain from hiring any prisoners from the Work Furlough program. Approximately five days later plaintiff found part-time work cleaning up mobile homes.

G. Several months later, plaintiff was mistakenly arrested as a prowler, and was sentenced to serve 30 days in jail by a Municipal Court Judge in Corona for trespassing. On or about December 7, 1971, plaintiff was given a hearing before defendants KERR and EDMAN, who told him that if they released him he would simply stick guns in people's face and burglarize, apparently referring to the trespassing incident (in which the police report of this incident clearly stated that plaintiff was not armed). Shortly thereafter, plaintiff received notice that his parole date had been rescinded, his sentences redetermined, and his parole release date reset to June 5, 1972, conditioned upon plaintiff receiving no more disciplinary reports.

H. In February of 1972, a prison guard, an agent, representative and employee of defendant PROCUNIER, submitted a falsified disciplinary report con-

cerning plaintiff, accusing him of an insubordinate attitude. As a result, plaintiff's case was referred back to the Adult Authority, which again rescinded his parole date and transferred him to CMC.

I. At CMC plaintiff JONES appeared before the Adult Authority in May of 1972, for a hearing which lasted approximately 90 seconds. At this hearing the Adult Authority declined to determine plaintiff's sentence or to grant parole, and scheduled his next hearing for December of 1972. Plaintiff JONES remains in the custody of the Department as a prisoner, presently confined at CMC.

J. In none of the Adult Authority hearings referred to in this paragraph was plaintiff permitted to know the information upon which the panel members based their decision. During the last four such hearings the Adult Authority members had before them information which was in material part either false or misleading, yet plaintiff was not permitted to rebut this information by cross-examining the persons who had made the statements involved, nor was he permitted to present any evidence in his behalf. At none of the hearings was plaintiff permitted to be represented by counsel.

9. *Plaintiff Charles Edward Van Nort*

A. In May of 1967, plaintiff CHARLES EDWARD VAN NORT was sentenced to a term of imprisonment for violation of California Penal Code Section 245, which sentence was ordered to run concurrently with the unexpired time on a previous con-

viction. On or about May 20, 1970, plaintiff CHARLES VAN NORT appeared before the Adult Authority which fixed his terms and granted him a parole, to become effective on December 1, 1970. Shortly thereafter, plaintiff was assigned to the Work Furlough program at Chino, and began work at the Mayfair Market in Montclair, California.

B. On or about November 11, 1970, at approximately 5:45 AM, several officers from the Montclair Police Department, together with several members of the Chino and/or parole office staff, approached plaintiff and placed him under arrest. Plaintiff immediately requested to be informed of the charge against him, but the arresting officials refused to supply this information. Plaintiff then requested the assistance of counsel and also permission to make a telephone call, but both requests were denied. Plaintiff was summarily taken into custody and returned to Chino, where he was placed in segregation and held incommunicado.

C. Plaintiff remained in segregation for approximately a week, during which time he was interrogated by a Mr. Smith, who refused to inform him of the charges against him, refused to afford him the opportunity to consult with counsel, or even to make a telephone call. Officials at Chino would tell him only that his "case" had been "referred to the Los Angeles District Attorney", leaving plaintiff to believe that he was being charged with a felony. Accordingly, he remained silent except for the numerous demands which he made for information concerning the charges against him and the assistance of counsel.

D. On or about November 20, 1970, having recently been released to the general population of the Reception Guidance Center at Chino, plaintiff was brought before a disciplinary committee of that prison and ordered to enter a "plea" to the "charge", although officials still refused to disclose the nature of said charge. Over plaintiff's objection, the hearing officer entered a plea of guilty as charged and entered a recommendation to the Adult Authority that plaintiff's parole date of December 1, 1970, be rescinded. In addition, plaintiff was forced to sign a document which purported to set forth the nature of his "offense."

E. On or about December 22, 1970, plaintiff appeared before an Adult Authority panel at which time his parole date was officially rescinded. At no time during the hearing was plaintiff allowed to see the report against him or to present evidence in his favor; instead, he was told only that the "incident" was under investigation by the Los Angeles County District Attorney. On or about January 11, 1971, plaintiff received official notification of the Adult Authority's action, and on or about January 19, 1971, plaintiff received official notification that he had been designated a "Special Interest Case" by the Adult Authority. Plaintiff VAN NORT remains in the custody of the Department, presently confined at CMC.

F. Since that time plaintiff has upon many occasions requested officials of the Adult Authority and the Department to inform him of the "crime" which he had allegedly committed, but on every occasion this information was either flatly refused or else

plaintiff was told that the case was still being investigated by the Los Angeles County District Attorney. Subsequent to the rescinding of plaintiff's parole date, he has twice appeared before the Adult Authority. On each occasion he has been denied parole solely on the grounds of the alleged "crime" which was the cause for rescinding his parole date in December of 1970.

G. Plaintiff has never been presented with a statement of the evidence or charges against him by defendants and has never been shown police reports or parole agent reports of said evidence or charges by defendants. It was not until May, 1972, in a Return filed by the Attorney General of the State of California to a Petition for a Writ of Habeas Corpus filed in California State Courts by plaintiff, that plaintiff ever learned the nature of the charges against him. The information contained in said Return is false and inaccurate and in fact does not indicate that any "crime" was committed by defendant while at liberty or that any crime formed the basis for his parole rescission. Rather, said information indicates that plaintiff is accused of having been absent from work for a few hours on an occasion when he was ill, and during a period when there was no requirement that he report hourly to the Work Furlough Center, and further that a bottle of whiskey allegedly belonging to plaintiff—but in fact belonging to his father—was found in plaintiff's automobile.

H. In none of the Adult Authority hearings referred to in this paragraph was plaintiff permitted to

know the information upon which panel members based their decision. During all of the hearings commencing with the proceedings leading to rescission, the rescission itself, and the subsequent denials of parole, the Adult Authority members had before them information which was in material part either false or misleading, yet plaintiff was not permitted to rebut this information by cross-examining the persons who had made the statements involved, nor was he permitted to present any evidence in his behalf other than to make a statement. At none of the hearings was plaintiff permitted to be represented by counsel. As a result of the rescission of his parole, plaintiff has been classified in a special category and required by the Adult Authority to complete a special program entitled "Stress Assessment Unit" before even becoming eligible for favorable parole consideration. Correctional staff members at CMC, informed plaintiff VAN NORT in April of 1972 that he must dismiss all litigation concerning his parole rescission or be taken out of the said Stress Assessment Unit, without participation in which he cannot be eligible for parole consideration. Challenging any action taken by correctional or Adult Authority staff is regarded as evidence of lack of rehabilitation, and the Stress Assessment Unit specializes in probings of acceptance of guilt and wrongdoing. Plaintiff is informed and believes and therefore alleges, that his parole has been denied since it was rescinded, in whole or in substantial part, because he has sought to challenge the proceedings and to obtain judicial review of them.

10. *Plaintiff Robert Newton Gardner, Jr.*

A. In March of 1957, plaintiff ROBERT NEWTON GARDNER, JR. was released on parole, and his sentence, as fixed by the Adult Authority, was scheduled to expire on or about March 18, 1960. On or about December 11, 1959, a hearing of which plaintiff was unaware, was held by the Adult Authority, at which time plaintiff's parole was suspended. On or about May 30, 1960, some nine weeks subsequent to plaintiff's discharge date, his parole was revoked and he was returned to the custody of the Department.

B. On or about February 1, 1971, plaintiff was again released on parole. On or about March 17, 1971, plaintiff was arrested on charges of assault with a deadly weapon and possession of a firearm by an ex-felon. In September of 1971, plaintiff pled guilty to a violation of California Penal Code Section 245 (assault with force likely to produce great bodily injury), whereupon the trial judge reduced the offense to a misdemeanor and sentenced plaintiff to serve an amount of County Jail time equal to time which he had already served, for which credit was given, so that as of the date of sentencing plaintiff had no more time to serve on this charge. At the same time, the trial judge indicated that he believed the offense had arisen out of a family dispute.

C. Plaintiff's parole officer prepared a report concerning the foregoing incident. However, plaintiff is informed and believes and therefore alleges that said

parole officer refused to return the calls of approximately eight prospective witnesses who wished to give evidence on behalf of plaintiff, three of whom were attorneys who were knowledgeable about plaintiff's case. Said report was necessarily, therefore, incomplete, inadequate, and seriously distorted.

D. On or about November 19, 1971, the Adult Authority placed plaintiff in the STRU (Short Term Release Unit) Program, the effect of which is generally to make an inmate eligible for parole from four to six months thereafter. Subsequently, plaintiff appeared before an Adult Authority representative named Halderman, whom plaintiff had previously known when Halderman was serving at Folsom Prison, and with whom the plaintiff did not get along. When plaintiff attempted to explain the circumstances surrounding his misdemeanor conviction, Halderman refused to listen, but instead referred to plaintiff as a "trouble-maker" and recommended that plaintiff's parole be revoked and that he be removed from the STRU Program. On January 5, 1972, the Adult Authority, during an *ex parte* hearing, approved the recommendations of Halderman. Plaintiff was not permitted to be present at this meeting, nor was he allowed to be represented by any of the three attorneys who had requested to appear in his behalf. Plaintiff GARDNER was released on parole subsequent to the institution of this action.

E. Plaintiff is informed and believes and therefore alleges that a parolee is normally removed from the STRU Program only for cause, that is, for a violation

of the rules of the program. Plaintiff, however, had a good record in the STRU Program and was not removed therefrom for having violated any regulation of the Program; rather, plaintiff was removed from the Program without any good cause solely because the Adult Authority representative who presided over his case was personally biased and prejudiced against plaintiff.

F. All of the foregoing occurred without plaintiff ever being afforded the right to be heard and present a defense against the charges made, including the right to call witnesses in his own behalf, the right to confront and cross-examine the witnesses against him, the right to counsel, and the right to fair and timely notice of his alleged misconduct.

11. *Plaintiff John Van Geldern*

A. In October of 1967, plaintiff JOHN VAN GELDERN was released on parole. In February of 1969, after being convicted of violating California Penal Code Sections 2610a, and 487, and California Corporations Code Section 25542, plaintiff was returned to prison as a parole violator. In April of 1970, plaintiff appeared for the first time before the Adult Authority for purposes of a parole revocation hearing. Plaintiff was charged with violating 12 parole conditions, including charges of "moving without permission" and "being a corporation president without permission." At that time plaintiff refused to plead to the charges unless he was first permitted elemental

due process rights which would permit him to rebut any false charges in the record. This request was denied, and plaintiff was summarily found guilty of all charges, whereupon his parole revoked.

B. In February of 1972, plaintiff appeared before defendants EDMAN and BOWLER for a sentence determination and parole release hearing. During the hearing, one of the defendants stated that plaintiff was responsible for defrauding a number of persons connected with plaintiff's former business venture of approximately $250,000. Plaintiff replied that in the 19 volumes of transcripts from his trial, ample and overwhelming evidence is proved that statement totally, and that he had not been responsible for any losses whatsoever. However, plaintiff was not permitted to rebut defendants' totally false statement by other than his own statement, unsupported at the hearing by the evidence which he was not permitted to adduce. Plaintiff VAN GELDERN did not receive advance notice of these charges nor detailed specification of them. Plaintiff was not able to have the transcripts considered nor in any other way to furnish evidence rebutting these charges.

C. At the said February, 1972, hearing plaintiff was advised that his case would be submitted to an *en banc* proceeding before all eight members of the Adult Authority, assisted by defendant SPANGLER, at which plaintiff would not be present. In late May of 1972, the Adult Authority meeting *en banc* and in the absence of plaintiff, refused to determine his sentence or to grant parole. Plaintiff VAN GELDERN

was released on parole subsequent to the institution of this action.

D. Although plaintiff does not know the full contents of his central file, upon which sentence fixing and parole determinations are substantially based, he is informed and believes and therefore alleges that his central files contain false, inaccurate, misleading, distorted and prejudicial contents, and that these contents formed, in substantial part, the basis for the May, 1972, parole denial. Plaintiff has on many occasions requested to review his central file, specifically in March of 1970 and December of 1971, and prior to the filing of this case plaintiff's attorneys herein made formal request to review said file, in order to ascertain the exact contents thereof, and to correct the false and misleading information contained therein, but all such requests have been denied by defendants. Plaintiff VAN GELDERN also requested to be represented by counsel at the Adult Authority hearings determining revocation and reconsideration for sentence-fixing and parole, to present evidence in his behalf at said hearings, and to confront and examine those submitting charges and allegations against him at said hearings. All said requests have been denied by defendants.

12. *Plaintiff George Chatfield*

A. On or about June 13, 1968, plaintiff GEORGE CHATFIELD was placed on parole following a term in California State Prison for robbery. Shortly after his release, he suffered a complete nervous breakdown

in which he became the victim of a psychotic delusion that he was a bodyguard to President Kennedy; that President Kennedy had not been killed, but kidnapped; and that he had been instructed to rob a bank in order to obtain money for the President's ransom.

B. On or about February 27, 1969, he was apprehended by federal authorities for the robbery of a federally insured bank in Santa Rosa, California. He escaped from said custody and was again apprehended in Washington State on or about October 13, 1969, and returned to San Francisco. In San Francisco, pursuant to an order of the United States District Court for the Northern District of California, he was evaluated and examined to determine his competency to stand trial on the bank robbery charge. On or about February 12, 1970, the examining psychiatrist determined that plaintiff was mentally incompetent to stand trial or to understand the charges against him and that he suffered from a paranoid, schizophrenic reaction.

C. A further, more detailed examination was ordered by the Court, pursuant to which plaintiff was sent to California Medical Facility at Vacaville (hereinafter "CMF") for examination by CMF's chief psychiatrist, A. F. Nugent, M.D. On or about April 13, 1970, following extensive examination, Dr. Nugent concluded that plaintiff was a schizophrenic and that he was suffering an acute schizophrenic illness of psychotic proportions. Dr. Nugent further concluded that plaintiff was mentally incompetent to understand the proceedings against him or to assist in his own defense.

D. Plaintiff was then committed to the Medical Center for Prisoners at Springfield, Missouri, where he remained—except for a brief period when he was returned to San Francisco—until August, 1971. Psychiatric evaluations during this period by Springfield staff and by psychiatrists for plaintiff establish that plaintiff was schizophrenic and that he needed institutionalized psychiatric treatment and supervision for an indefinite period of time.

E. Because of the likelihood of an insanity defense prevailing at any trial on the federal bank robbery charges, the United States Attorney elected to dismiss the federal charges in August, 1971. Plaintiff was thereupon returned to California State Prison to face parole violation charges which included a charge that he committed the same bank robbery which had just been dismissed in Federal Court. Plaintiff was at this time still schizophrenic and paranoid and incapable of assisting in any defense, or of arguing to the Adult Authority that he should be committed to a mental institution.

F. Plaintiff first appeared before two members of the Adult Authority at a parole revocation hearing in December, 1971. At said time he requested the right to have an attorney. Said request was denied. He was then asked to plead guilty or not guilty to the parole violation charges against him. Plaintiff then stated that he could not enter a plea without some assistance and that he did not know what the charges were about

nor did he understand them. The panel refused all requests for assistance, adjourned the revocation hearing, and summoned plaintiff to a new hearing in January, 1972. At the January, 1972, hearing, two Adult Authority members badgered and pressured plaintiff for over an hour to plead either guilty or not guilty to the charges against him and refused again to permit him to be represented by counsel. Plaintiff again declined to enter either plea without legal assistance, and left the revocation hearing. In his absence, the panel found plaintiff guilty of having violated conditions of his parole, revoked said parole, refixed his sentence at the maximum of life, and returned him to State Prison to finish his term. Plaintiff has been in San Quentin Prison ever since.

G. At each of the foregoing hearings before the Adult Authority, the panel members acted without affording plaintiff any opportunity to make a coherent presentation of his case since he was incompetent and insane. The Authority therefore did not have a full, complete, or accurate picture of the facts of his case, nor did it have before it any analysis of what possible dispositions short of a new state prison commitment were available in plaintiff's case.

13. Under the law of the State of California, a trial judge may not set the term of imprisonment for one convicted of a felony; rather, any such person who is sent to prison must be sentenced to the term prescribed by California's indeterminate sentence law which provides, in most case, for both a minimum and a maximum term of imprisonment. The actual prison

term to be served by the prisoner, as well as the amount of time to be served on parole, is determined by the California Adult Authority, which consists of nine members appointed by the Governor, assisted by hearing representatives appointed by the Chairman of the Adult Authority. Determinations with respect to term-fixing and parole release are made by members and hearing representatives, who typically sit in panels consisting of two members and/or representatives. Adult Authority procedures change frequently with changes in administrations, shifts in political winds, and alterations in penological fads. Typically however, if an inmate's term is not fixed, he is scheduled for another hearing a year later. The Adult Authority's term-fixing, parole release hearings average about 15 minutes in length, and are followed by deliberations of the panel members which usually last less than two minutes in length. The only written material generally considered by the panel members is that contained in the inmate's central file, which one panel member often reads while the other panel member is carrying the interview of the preceding inmate. If the Adult Authority refuses to fix the inmate's term, he is given a written statement of reasons for the denial.

14. Effective March 1, 1975, a number of experimental changes were instituted by defendant PROCUNIER, who had recently been appointed as Chairman of the California Adult Authority (these changes are sometimes hereinafter collectively referred to as the "Procunier System"). Changes in the

Adult Authority's policies and procedures instituted under the Procunier System include the following:

A. The Adult Authority fixes the term and sets a parole release date for most, but not all, of the inmates who appear before it. This parole release date, in the discretion of the Adult Authority, may later be taken away or altered for a variety of reasons;

B. In fixing time, the Adult Authority utilizes so-called "base ranges" which are minimum and maximum periods of time established for most felonies by the Adult Authority. These have no particular logical bases, but are simply based upon the median prison sentences served by prisoners in California during the past five years. Moreover, the Adult Authority panels are free, in their sole discretion, to fix terms outside these ranges, and in fact they often do so;

C. In addition to fixing terms in accordance with the base ranges, additional time is ordinarily added to a prison sentence for any and all of the following, to wit:

(i) other sentences, whether ordered by the sentencing judge to run concurrently or consecutively with the "base range" sentence;

(ii) prior convictions;

(iii) prior prison terms;

(iv) subsequent offenses; and

(v) in-prison disciplinary offenses;

D. Whenever an inmate's term is fixed and a parole date is given, no reasons are furnished to the inmate, regardless of how long the term may be or

how far in the future the parole release date may be; and

E. An "appeals" system is provided (utilizing Adult Authority members and hearing representatives) whereby an inmate may challenge, for a very limited number of reasons, the action of the Adult Authority.

15. Hearings are also conducted by the Department of Correction, which purport to adjudicate infractions of prison rules. Consequent to such adjudications prisoners may be punished by transfer, assignment to solitary confinement, permanent reclassification to maximum security sections, and other loss of the restricted liberty which is available to the general prison population. Reports concerning these alleged infractions are placed in the files of plaintiffs and the members of their class, are available to the Adult Authority, and are often used to deny or rescind parole.

16. The hearing procedures employed by the Adult Authority and by the Department of Corrections are constitutionally infirm because they are not designed to be, nor are they effective in exposing and developing the critical facts upon which the Department's and the Adult Authority's decisions must be made, or in applying to such facts criteria appropriate to reaching a rational and correct decision as a matter of law. Constitutional defects in these procedures (as they existed prior to March 1, 1975, and as they presently exist pursuant to the Procunier System) include, *inter alia*, the following:

A. Defendant Adult Authority members, hearing representatives, and administrative officers have no expertise in arriving at fair decisions concerning term-fixing or parole release. To the contrary, said members, representatives, and administrative officers are quite unsuited for the task as a result of:

(i) The narrow partisan background which virtually every one of them possesses, due to having been for many years a law enforcement officer or an employee of the California Correctional System, and the punitive anti-prisoner biases which they possess;

(ii) Their experience as Adult Authority members, representatives or administrative officers, which has led them to adopt rigid and stereotyped thinking patterns pursuant to which they look more for the quality of servility than for those qualities which would, in fact, portend success on parole; and

(iii) Their totally inadequate knowledge, experience, or education in the use, meaning or limitations of psychological or psychiatric terms, diagnoses, prognoses, or tests, even though psychiatric reports and concepts are heavily relied upon by defendants in arriving at term-fixing and parole release decisions.

B. The persons who serve as members and representatives of the Adult Authority do not reflect a wide or representative cross-section of the population of California, but instead manifest attitudes which militate against a fair and open attitude in assessing parole readiness.

C. At the hearings, panel members rely heavily upon written material which is unreliable, because composed of reports which:

(i) Are often false, malicious, inaccurate or misleading;

(ii) Are essentially one-sided, insofar as they contain almost exclusively adverse material, without a corresponding emphasis upon the positive aspects of an inmate's prison behavior;

(iii) Are placed in an inmate's file through a process which contains no substantial safeguards whatsoever to determine reliability; and

(iv) May not be reviewed in their entirety by the inmate, who is therefore unable to refute even the most demonstrably untrue information.

D. Psychiatric evaluations are prepared by prison staff members and submitted to the Adult Authority for many prisoners. Although these reports are extremely unreliable, because they:

(i) Are prepared by inadequately trained personnel;

(ii) Are prepared in an inadequate amount of time;

(iii) Pretend to make predictions which cannot in fact validly be made; and

(iv) Are often misunderstood by the Adult Authority members or representatives, who are untrained in psychology or psychiatry;

the Adult Authority places heavy reliance thereon, often either refusing to fix an inmate's term or fixing

a longer term than would otherwise be imposed based upon the so-called psychiatric evaluation.

E. Hearings held by the Department of Corrections (1) to adjudicate alleged rules infractions and to impose disciplinary sanctions (including prolonged isolation and loss of privileges) or (2) to write and lodge reports of infractions and other incidents in the permanent central files of inmates are conducted arbitrarily and capriciously. Investigation of the facts of such alleged infractions is biased and incomplete and inmates are not given an opportunity to rebut or, in many cases, even to see the evidence against them. When formal hearings are held at all, they are conducted by partial and interested personnel. Neither the inmate nor any representative of the inmate is authorized to see his entire central file even though items in said file are frequently used as evidence against him. These procedures are not designed to and in fact do not develop the critical facts on which administrative decisions are made and reports are made; and many inmates are denied parole by the panel based upon such reports which are, in fact, false or misleading.

F. In appearing before an Adult Authority Panel, most inmates are so fearful, tongue-tied, or lacking in the ability to organize and articulate their position that they are unable to make an effective presentation of their case, or even on occasion to respond accurately to questions posed by the panel. Many such inmates are unable to make an effective presentation of their case because of a low Intelligence Quotient

("I.Q.") level, a lack of education, language difficulties, psychiatric disorders, or the adverse effects of the heavy medication to which they are subject at the time of the hearing. All prisoners are severely handicapped in making an objective or effective presentation by reason of their intense involvement in their own case and their confinement in the limited, artificial and authoritarian setting of a prison environment. Usually, the inmate has no idea what the two panel members are concerned about. Sometimes the panel explicitly informs the inmate of their particular concerns, and sometimes it does not. The impression which the panel members receive concerning the inmate is often quite different from the truth.

G. In every hearing the panel members do not have or do not take sufficient time:

(i) To thoroughly review the relevant written material before them;

(ii) To conduct a thorough and meaningful interview with the inmate; or

(iii) To arrive at an informed decision pursuant to an adequate discussion of the case.

H. Inmates are often told, at a term-fixing hearing, that particular accomplishments (e.g., participation in vocational training or group counseling) are expected of them prior to their next appearance before the Adult Authority, if they are to have their sentence fixed and parole granted. Often, however, the inmate will accomplish the very matters prescribed, only to be told by two different members of

representatives at his next hearing that those accomplishments are irrelevant and that some one or more items must be performed during the subsequent year. Such inconsistency from year to year, and between different members and representatives of the Adult Authority, causes frustration, bitterness and hostility in many inmates, and is therefore anti-rehabilitative in nature.

I. The term-fixing and parole determinations made by the Adult Authority are made in the absence of any officially adopted or consistently applied criteria.

J. The term-fixing and parole decisions reached by the Adult Authority, depend, in large part, upon certain basic assumptions which are false and without basis in fact. Such assumptions include, *inter alia*, the notion:

(i) That a parole board is able to predict future dangerousness or the likelihood of recidivism among the inmates whose terms it fixes;

(ii) That so-called treatment programs administered in the prisons are meaningful, and that participation in them by prisoners is likely to increase the chances of their success on parole; and

(iii) That psychologists and other prison staff members are able to do and conduct meaningful psychiatric evaluations of prisoners, and transmit such information to the Adult Authority in reports which it correctly interprets and may justifiably rely upon in reaching its term-fixing and parole decisions.

K. Because of the considerations set forth in this paragraph, the decisions reached and the actions taken by Adult Authority members and representatives herein complained of are decided in an arbitrary and capricious manner and are based upon:

(1) Mere whim and caprice, reflecting primarily the panel member's personal predictions, and uninformed hunches and guesses;

(2) Discriminatory considerations, reflecting primarily the panel member's own political, racial, and other biases and/or;

(3) Criteria which in fact do not correspond to the likelihood of success on parole, and therefore are not based upon the "good cause" required by State law and the Federal Constitution.

17. State prisoners perceive Adult Authority and Department of Corrections hearings to be eminently unfair, and they share a widespread belief, based on fact, that the Adult Authority and the Department consistently act in an arbitrary, discriminatory, and illegal manner; that their central files, upon which the Adult Authority places heavy reliance, contain much untrue and misleading information; and that the indeterminate sentence implemented through the type of hearing presently conducted by the Adult Authority, is fundamentally unfair. In fact, the type of Adult Authority and Department of Corrections hearings described herein cause grave and extensive anxiety and suffering.

18. The intended benefits of the indeterminate sentence have, in fact, been utterly perverted by the

defective hearings conducted by the Adult Authority, as described herein. The result is that California presently exacts the longest sentences in the nation, and is holding in confinement literally thousands of inmates who should not be imprisoned by any rational criteria, thereby inflicting needless massive human suffering.

19. As a result of the defective procedures and excessive imprisonment complained of herein, millions of dollars exacted from the taxpayers of the State of California are annually being spent in an unlawful and unconstitutional manner in order to finance the Adult Authority and its supporting bureaucracy and to maintain, in prison, persons who would not otherwise be incarcerated.

20. The appeals system adopted by the Adult Authority is grossly inadequate and fails to cure the defects complained of herein, inasmuch as it does not result in an effective review of most term-fixing or parole release determination, and is in fact maintained largely to dissuade courts and the legislature from abolishing or modifying the procedures followed by the Adult Authority.

21. The procedures presently in effect pursuant to the Procunier System have been modified since their initial adoption and may in the future be instantly modified by the Adult Authority for any reason or for no reason at all. Moreover, many individual features of the Procunier System are unlawful (such as the treatment under that system of concurrent sentences) and will require drastic future changes in the system.

LEGAL CLAIMS

22. While acting under color of the law of the State of California, as more fully described in Paragraphs 13 through 21 hereof, defendants have deprived plaintiffs and the members of their class of the following rights which are secured to them by the United States Constitution and by the Constitution and Statutes of the State of California:

A. The right not to have a decision by the Adult Authority, which fixes a prisoner's term and/or sets a date for his release on parole, made upon an arbitrary, capricious or discriminatory basis, in the absence of valid and consistently applied criteria established in advance of judgment, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and Article I, Section 13 of the California Constitution.

B. The right not to have term-fixing and parole release decisions made upon criteria and assumptions which are false and without basis in fact, as more fully set forth in Paragraph 16 hereof, in violation of Due Process clause of the Fourteenth Amendment and Article I, Section 13 of the California Constitution.

C. The right not to have term-fixing and parole release decisions made in the absence of counsel and other fundamental procedural safeguards, including, *inter alia:*

(i) Timely notice of all proceedings and hearings, timely and informative notice of all charges including a statement of the charge and of the

evidence to be relied upon, and an opportunity to conduct a timely review of the entire central file:

(ii) An opportunity to be heard, to subpoena and present witnesses, to present documentary evidence and to confront and cross-examine witnesses;

(iii) The right to be represented by counsel at any hearing;

(iv) The right to be heard by an unbiased panel or official and the right to challenge any panel or official for cause;

(v) The right to receive a verbatim transcript of any hearing and a statement written by the panel members of the evidence relied upon and of the reasons for:

(a) refusing to fix a prisoner's term or grant him a release on parole; or

(b) setting a parole release date which is more than six months subsequent to the date of the hearing; and

(vi) The right to challenge any member of a disciplinary committee or any Adult Authority panel member for bias or other valid cause,

in violation of the Due Process Clause of the Fourteenth Amendment, and Article I, Sections 8, 11, 13, and 21 of the California Constitution.

D. The right to be free from prolonged incarceration for periods of time and for reasons which shock

the general conscience and are intolerable to fundamental fairness, which constitute punishment greatly disproportionate to any offense for which they are imposed and which go beyond what is necessary to accomplish any legitimate penal aim, in violation of the Eighth Amendment and Article I, Section 6 of the California Constitution.

E. The right not to serve an excessive amount of time in prison because of other sentences (whether concurrent or consecutive) which have been imposed, in-prison disciplinary offenses, prior convictions, prior or subsequent prison terms, or pre-jail time for which insufficient credit has been given, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and the Constitution and Statutes of the State of California.

F. The right not to have disciplinary sanctions imposed for the alleged violation of prison rules, or reports of said violations placed in inmate central files, in the absence of a fair and impartial investigation of the facts, a hearing before an impartial tribunal and a right to counsel whenever serious disciplinary sanctions are considered, the right to call and cross-examine witnesses, and the right to view and examine the inmate's entire central file, all of which rights are secured by the Fourteenth Amendment to the United States Constitution and Article I, Sections 8 and 13 of the California Constitution.

23. An actual controversy has arisen and now exists relating to the rights and duties of the parties, in that defendants have denied and continue to deny

to plaintiffs and their class the constitutional and statutory rights set forth in Paragraph 22 hereof. As a result of these violations, plaintiffs and the members of their class have been and will continue to be irreparably injured by the aforesaid conduct of defendants unless this Court grants the declaratory relief which they seek. Plaintiffs have no plain, adequate, or complete remedy at law to redress the unlawful acts complained of herein.

WHEREFORE, plaintiffs and the members of their class request that this Court:

1. Issue a declaratory judgment that the Indeterminate Sentence Law, as presently administered by the California Adult Authority, is unconstitutional as violative of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 7, 14, 15, 17 and Article IV, Section 16, of the California Constitution;

2. Issue a declaratory judgment that the acts of defendants enumerated in Paragraphs 7 through 21 hereof violate the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 7, 14, 15, 17 and Article IV, Section 16, of the California Constitution;

3. Issue an order that plaintiffs' attorneys are entitled to the payment by defendants of costs and reasonable attorneys' and witnesses' fees;

4. Certify that this action may be maintained as a class action under Rule 23, Federal Rules of Civil Procedure; and

5. Grant such other and further relief as to the Court seems appropriate, including retaining jurisdiction in this matter.

Dated: February 17, 1976

Respectfully submitted,
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[Proof of Service Omitted in Printing]